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Supreme Court of the United States

October Term, 1978

No. --- 78-1812

HEATHER ELIZABETH O'DONNELL, and KATHLEEN ANNE O'DONNELL, MICHAEL BRENT O'DONNELL, and TIMOTHY HUGH O'DONNELL, by their next friend, HEATHER ELIZABETH O'DONNELL,
Appellants,
v.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an Illinois Insurance Corporation,
Appellee.

AN APPEAL FROM THE SUPREME COURT OF MICHIGAN

JURISDICTIONAL STATEMENT

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The O'Donnell family, as a result of the death of Mr. O'Donnell in an automobile accident, were entitled to Michigan no-fault insurance benefits and Social Security survivors benefits. Pursuant to the Michigan statute challenged, the O'Donnell family was denied no-fault insurance benefits for every Social Security dollar received and limited to a maximum statutory recovery of $1,000 per month irrespective of actual losses of support sustained. While others similarly situated, at the same no-fault premium, are allowed to recover full no-fault benefits up to $1,000 per month and full private collateral benefits irrespective of the statutory maximum and actual losses sustained. The Michigan Supreme Court rejected the O'Donnell family's Equal Protection and Due Process challenges to the statutory classification based on the source of collateral benefits received.

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Michigan and seven other states have indirectly upsurped the congressional determination of "needy" by denying a variety of federal assistance recipients no-fault benefits for every federal dollar received. This case is representative of the wide multistate class covering potentially thousands of federal assistance recipients who have been denied millions, if not billions, of dollars in no-fault benefits by the state's use of federal dollars to discharge private no-fault insurance contract obligations. The state's indirect assertion of power over federal funds is an important multistate issue of enormous financial implications and an important unsettled question of the federal constitutional law.

In this case, the Michigan Supreme Court approved the legislative classification which denies no-fault benefits to the O'Donnell family for every Social Security survivors dollar received and limits the family's recovery to a maximum joint recovery of $1,000 per month irrespective of the actual losses sustained. However, similarly situated individuals, at the same premium, are allowed to receive full no-fault benefits and private collateral benefits irrespective of actual losses sustained and in excess of the statutory maximum. The Michigan Supreme Court stated that the legislative purposes advanced by the statutory classification were to make available optional additional coverage, provide minimum premium availability and eliminate unwanted duplication. The O'Donnell family respectfully

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submits that these legislative objectives are equally advanced by an elective governmental setoff and an elective private collateral benefit setoff. Thus, the legislative goals identified by the Supreme Court do not provide a rational basis for the *difference* in the statutory classification of governmental and private collateral recipients.

The O'Donnell family respectfully submits that the statutory classification of governmental and private collateral recipients is a denial of Equal Protection and Due Process of the laws guaranteed by the Federal Constitution.

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IN THE

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October Term, 1978

No. ---

HEATHER ELIZABETH O'DONNELL, and KATHLEEN ANNE O'DONNELL, MICHAEL BRENT O'DONNELL, and TIMOTHY HUGH O'DONNELL, by their next friend, HEATHER ELIZABETH O'DONNELL,
Appellants,
v.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an Illinois Insurance Corporation,
Appellee.

AN APPEAL FROM THE SUPREME COURT OF MICHIGAN

JURISDICTIONAL STATEMENT

Heather Elizabeth O'Donnell, and her three minor children appeal the Michigan Supreme Court's opinion finding no equal Protection or Due Process violation of the Michigan No-Fault Automobile Insurance statute which denies no-fault benefits to the extent social security survivors benefits are received.

OPINIONS BELOW

The Michigan Supreme Court opinion was reported at 404 Mich 524, — NW2d — (1979) (A. 1 to A. 63). Application for rehearing was denied March 8, 1979 (A. 65). The Michigan Court of Appeals decision was reported at 70 Mich App 487, 245 NW2d 801 (1976) (A. 66 to A. 83). The unpublished Circuit Court opinion is included in the appendix (A. 83 to A. 84).

JURISDICTION

In this suit for breach of contract and declaratory judgment the Michigan Supreme Court on January 4, 1979, sustained the constitutionality of a Michigan statute (A. 1). The application for rehearing was denied on March 8, 1979 (A. 65). The notice of appeal to this Court was filed with the Michigan Supreme Court on May 2, 1979, with the Court of Appeals on May 3, 1979, and with the Circuit Court on May 1, 1979. The Michigan Supreme Court Clerk would recall and certify the records if requested.

This appeal is being docketed in this Court within 90 days from the Michigan Supreme Court's denial of rehearing. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

MCLA 500.3109(1)

> Benefits provided or required to be provided under the laws of any state or the federal government shall be subtracted from the

personal protection insurance benefits otherwise payable for the injury.

The Fourteenth Amendment of the United States Constitution and other relevant portions of the Michigan No-Fault Insurance Act are set forth in the appendix (A. 89 to A. 92).

QUESTIONS PRESENTED

I.

WHETHER THE PROVISION OF THE MICHIGAN NO-FAULT LAW, MCLA 500.3109(1), IS AN UNCONSTITUTIONAL VIOLATION OF EQUAL PROTECTION AND DUE PROCESS OF LAWS IN UNREASONABLY DIVIDING THE NATURAL CLASS OF NO-FAULT RECIPIENTS INTO TWO SUBCLASSIFICATIONS EXTENDING THE RIGHT TO FULL NO-FAULT BENEFITS AND FULL PRIVATE COLLATERAL BENEFITS TO ONE SUBCLASSIFICATIONS, WHILE DENYING TO SIMILARLY SITUATED GOVERNMENTAL ASSISTANCE RECIPIENTS THE RIGHT TO GOVERNMENTAL ASSISTANCE AND FULL NO-FAULT BENEFITS

II.

IF AN ELECTIVE GOVERNMENTAL SETOFF AND AN ELECTIVE PRIVATE SETOFF EQUALLY ADVANCE THE LEGISLATIVE OBJECTIVES, AS IDENTIFIED BY THE MICHIGAN SUPREME COURT, OF OPTIONAL ADDITIONAL COVERAGE AT INDIVIDUAL EXPENSE, MINIMUM PREMIUM AVAILABILITY, AND ELIMINATION OF UNWANTED DUPLICATION, DID THE COURT ERRONEOUSLY CONCLUDE THAT THERE WERE DISTINGUISHABLE CHARACTERISTICS, RELEVANT TO THOSE LEGISLATIVE OBJECTIVES, FOR THE DIVERSE STATUTORY TREATMENT BASED SOLELY ON THE SOURCE OF THE COLLATERAL BENEFITS?

STATEMENT OF THE CASE

On February 19, 1974[1], GARY B. O'DONNELL was killed in an automobile accident. His widow, HEATHER O'DONNELL, and their three minor children, were entitled to federal social security survivors benefits (mother's and children's benefits) 42 USC §402 (e); 42 USC §402 (g); totalling $556.00 per month (A. 25). During the appeal, social security benefits gradually increased to $756.80 per month because of inflationary adjustments (A. 25) 42 U.S.C. §415.

In addition since the actual losses of support were in excess of the maximum no-fault benefits, the O'Donnell family was entitled to the maximum no-fault benefits of $1,000 per month for three years from their insurer, State Farm. However, pursuant to statute, State Farm was compelled to reduce the O'Donnell's no-fault benefits for every social security dollar received.

The Michigan No-Fault Automobile Act is compulsory for all registered motor vehicles[2] and provides criminal sanctions for non-compliance[3]. The benefits are provided by private no-fault insurers to their own insureds without regard to fault[4]. In case of death, the dependent survivors[5] receive no-fault insurance benefits for losses of support up to the statutory maximum of $1,000 per month for 3 years[6].

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[1] A.2; A.24; (complaint par. 4);

[2] MCLA 500.3101(1); (A. 89);

[3] MCLA 500.3102; (A. 89 to A. 90);

[4] MCLA 500.3105 (1), (2), (3); (A. 90);

[5] Wife and children surviving dependents, MCLA 500.3110(1), (a), (c); (A. 92);

[6] MCLA 500.3108; (A. 91);

At the time of Mr. O'Donnell's death, the No-Fault Act required that no-fault benefits be reduced by any governmental benefits received[7]. However, a recipient of no-fault benefits and other collateral private benefits received both benefits in full without any setoff. Approximately 3 1/2 months after Mr. O'Donnell's death, the Michigan legislature amended the No-Fault Act to offer recipients of no-fault benefits and private collateral benefits a choice of full recovery of both benefits or lower no-fault benefits at "appropriately reduced premium rates."[8]

HOW THE FEDERAL QUESTION WAS PRESENTED

On April 23, 1975, the O'Donnell family filed a complaint in the Michigan Circuit Court against State Farm, alleging breach of contract for failing to pay $1,000 per month in no-fault benefits and for a declaration that the governmental benefit setoff of the No-Fault Act violated Due Process and Equal Protection guarantees of the Fourteenth Amendment of the United States Constitution. Essentially, the complaint alleged that the governmental setoff was an arbitrary and discriminatory bifurcation of the natural class of no-fault beneficiaries into two subclasses, governmental recipients and private collateral benefit recipients. The governmental setoff resulted in denied or reduced no-fault benefits for governmental recipients but allowed full recovery of no-fault benefits to similarly situated recipients of private collateral benefits (A. 25; A. 67).

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[7] MCLA 500.3109(1); set forth in Constitutional Provisions and Statutes Involved, infra.

[8] MCLA 500.3109(a); (A. 91 to A. 92)

State Farm filed a motion for summary judgment admitting the $1,000 per month no-fault obligation and the reduction for social security benefits received. The trial court order granting summary judgment ruled that there was no breach of contract and that State Farm's policy of insurance, conforming to the Michigan statute, was not engaged in state action, and hence the constitutional challenge was unsupportable as a matter of law (A. 26; A. 67).

The Michigan Court of Appeals in a 2 to 1 decision reversed the trial court and ordered an entry of judgment for the O'Donnell family. The majority opinion held that the classification allowing recovery of no-fault benefits and private insurance benefits for some no-fault recipients while denying full no-fault benefits to governmental recipients for any governmental benefits received was arbitrary and unreasonable (A. 69; A. 72).

The Michigan Supreme Court in a 4 to 3 decision, dated January 4, 1979, reversed the Court of Appeals. The majority opinion found MCLA 500.3109(1) did not violate the due process or equal protection clauses of the federal or state constitution (A. 1; A. 2; A. 10). The majority also upheld the elective private insurance setoff, MCLA 500.3109(a), over the protests of the O'Donnell family, despite the fact that the elective setoff provision was not enacted or given effect until June 3, 1974, some 104 days *after* Mr. O'Donnell's death and the no-fault rights vested prior to such *ex post facto* legislation. The majority opinion expressly limited its

holding to the social security survivors benefits before the court (A. 2). Justice G.M. Williams wrote a 36 page dissenting opinion on behalf of three justices (A. 20 to A. 62). A timely request for rehearing was filed on January 23, 1979 and denied on March 8, 1979.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

A.

MICHIGAN AND SEVEN OTHER STATES HAVE STATUTORY PROVISIONS DENYING NO-FAULT BENEFITS IN WHOLE OR IN PART TO PERSONS RECEIVING VARIOUS FEDERAL ASSISTANCE FUNDS.

The concept of no-fault automobile insurance has been adopted in 24 states[1]. The Michigan statute challenged in this proceeding provides that any benefits received under any federal or state law shall reduce the no-fault insurance benefits otherwise payable, MCLA 500.3109(1).

This concept of using a variety of federal assistance funds to discharge private insurance no-fault obligations has also been adopted in seven other states:

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[1] L. Matthews, Blashfield Automobile Law and Practice, 3rd (Cum. Supp to Vol 7, ch. 275 1978) p. 7

New York[2], Pennsylvania[3], Hawaii[4], Nevada[5] (repealed 1977), Kentucky[6], New Jersey[7], Utah[8], and Florida[9]. In addition, under a number of proposed federal no-fault bills, the use of federal and state funds to reduce private insurers' no-fault obligations has been repeatedly proposed.[10]

This constitutional challenge has immediate multistate and national significance to the beneficiaries of federal assistance funds. The legal issues presented transcend far beyond the boundaries of Michigan and are significant, compelling subjects of national, federal constitutional interpretation.

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[2] (A. 92) (social security disability benefits or federal or state workmen's compensation)

[3] (A. 93) (all federal and state statutory benefits — except medicaid and certain medicare benefits)

[4] (A. 93) (social security, workmen's compensation, public assistance laws, etc.); amended 1977, c166 §3 to exclude social security survivors' benefits from the setoff.

[5] (A. 94) (social security, railroad retirement, F.E.L.A., workmen's compensation); amended 1977, Nevada Stat., Chp. 53; §12, §33 to apply only to workmen's compensation.

[6] (A. 94) (social security, workmen's compensation)

[7] (A. 95) (medicare, employees temporary disability statutes, workmen's compensation)

[8] (A. 95) (military benefits, workmen's compensation or any similar plan)

[9] (A. 95) (medicaid or workmen's compensation)

[10] (A. 96 to A. 99)

B.

THE ISSUES PRESENTED INVOLVE ENORMOUS FINANCIAL CONSEQUENCES TO A MULTITUDE OF FEDERAL ASSISTANCE RECIPIENTS UNDER THE VARIOUS NO-FAULT STATUTES ALLOWING GOVERNMENTAL SETOFFS.

The State of Michigan has had no-fault insurance and the governmental benefit setoff since October 1, 1973, MCLA 500.3179. Thus, over the last 4 1/2 years, every social security survivor recipient whose decedent died in an automobile accident in Michigan has been denied the no-fault benefits otherwise provided by statute. Furthermore, the broad Michigan language referring to any governmental benefit received under a federal law would, subject to the Michigan Supreme Court interpretation, apply to social security disability, state and federal pensions, veterans benefits, medicare, and a variety of other federal assistance programs.

Furthermore, the other seven state statutes cited above have also excluded federal recipients from full no-fault benefits since their enactment. This tremendously broad class of people represents an enormous financial savings that various state insurers have enjoyed under the governmental setoff provisions.

The *O'Donnell* case and the economic consequences brought by the Michigan governmental setoff is a fair and representative example of the plight of federal recipients under many no-fault plans. The O'Donnell family paid for social security survivors benefits and paid the uniform no-fault premium (State Farm's brief in the Michigan Supreme Court at p. 35) for full no-fault benefits, but were denied the recovery of full no-fault benefits solely on the basis of the *source*

of the other funds received (governmental). The mandates of the Michigan statute have overridden the congressionally determined "needy" and indirectly placed those federal funds in the coffers of the private automobile insurers. Even assuming, *arguendo*, that these insurers benefit savings have been spread uniformly to all Michigan motorists, the Michigan statute has singled out social security and other governmental recipients to suffer deprivation of no-fault benefits due them (50% to 75% in the case of O'Donnells') to provide cheaper insurance to all Michigan motorists by this arbitrary cost cutting class legislation (A. 56 to A. 58, Williams' dissent).

The amount in dispute between the O'Donnell family and State Farm is in excess of $20,000 (A. 25; A. 67). However, when every social security survivors recipient, social security disability recipient, veterans benefit recipient, medicaid and other federal benefit recipients are totalled, the potential amounts in dispute are astronomical.[11] State Farm, when discussing the *elective* private collateral setoff, attached to its reply amici brief in the Michigan Supreme Court exhibits claiming that the private coordination would save ninety million ($90,000,000.00) dollars per year. If similar savings were achieved by the governmental setoff, the total amount in controversy in Michigan alone would exceed four hundred million ($400,000,000.00) dollars. In Michigan and in the other seven states where federal governmental benefit

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[11] Since a summary judgment was entered in the trial court against the O'Donnell family, no discovery or trial proofs are available.

reductions are allowed, the total amount in controversy may involve billions of withheld no-fault benefits from state and federal governmental recipients. Also, because of statutory limitations of action and limitations of first party benefit recovery, such as Michigan's one year back rule,[12] the delay in national federal constitutional determination results in irrecoverable losses of no-fault benefits to governmental recipients who have not filed suit and a corresponding profit to no-fault insurers, irrespective of the constitutionality of the statute.

The O'Donnell family respectfully submits that the tremendously broad class of federal recipients involved, the multistate statutes and the astronomical amounts in dispute present a compelling and immediate need for federal constitutional examination and decision.

C.

THE LEGISLATIVE OBJECTIVES IDENTIFIED IN THE MAJORITY OPINION DO NOT RATIONALLY SUPPORT THE STATE'S OFFICIOUS REALLOCATION OF FEDERAL ASSISTANCE FUNDS BY THE STATUTORY BIFURCATION OF NO-FAULT RECIPIENTS ACCORDING TO THE SOURCE OF COLLATERAL BENEFITS RECEIVED.

The Michigan No-Fault Act creates a natural class of no-fault beneficiaries who are entitled to private no-fault contractual insurance benefits. The bifurcation of no-fault recipients into subclasses based solely upon the source of collateral benefits received lacks uniformity in treatment of similarly situated persons.

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[12] MCLA 500.3145

All Michigan motorists pay the same uniform premium for no-fault coverage but all do not receive the same benefits; MCLA 500.3109(1) carves out an exception for governmental recipients and denies them no-fault benefits otherwise payable and limits their maximum recovery to $1,000.00 irrespective of actual losses, while others similarly situated are allowed to receive full no-fault benefits and full collateral private benefits. The elective private setoff does not create uniformity but rather merely adds an option to the privileged subclass of no-fault recipients entitled to no-fault benefits and private collateral benefits. The elective private setoff allows a private collateral benefit recipient to recover full no-fault benefits and full private collateral benefits, not subject to the statutory maximum of $1,000 per month, or to elect, at appropriately reduced premium rates, deductibles and exclusions to reduce the no-fault benefits payable. Private collateral benefit recipients by MCLA 500.3109(a) are offered larger no-fault benefits than those received by governmental recipients at the same uniform premium rate or a lower premium rate. From the perspective of premiums or benefits, the elective setoff simply increased the disparate treatment between similarly situated no-fault recipients.

In economic regulations the constitutional scrutiny is not a toothless judicial examination, *Mathews* v. *Lucas*, 427 US 495, 510 (1976); *Mathews* v *DeCastro*, 429 US 181, 185 (1976). The statutory classification must rationally further the purpose identified by the state for the statutory subclassifications, *Massachusetts Board of Retirement* v. *Murgia*, 427 US 307, 314 (1976); or the purpose as stated and identified by the highest state court, *Trimble* v. *Gordon*, 430 US 762, 768, 770, 775 (1977).

In this case, the majority opinion asserted that the statutory subclassification between governmental and private recipients was rationally related to the legislative objective of making additional coverage available at the expense and election of the individual (A. 13).

An elective private setoff provision, MCLA 500.3109(a), would advance the rational legislative objectives of minimum premium cost availability, elimination of unwanted duplication, and optional additional coverage. However, the same objectives would be equally advanced by an elective governmental setoff. Both Social Security recipients and private insurance recipients may have economic needs and/or wages exceeding the maximum no-fault coverage of $1,000 per month. If the governmental setoff were elective, the social security recipients could elect to meet their additional needs by declining the governmental setoff. The individual would bear the sole burden of unreduced no-fault premiums. In both cases there is a perceived need for supplemental coverage and that coverage is borne by the individual in higher private insurance premiums or unreduced no-fault premiums. The additional coverage option does not rationally support the *difference* in statutory subclassification between compelled governmental setoffs and elective private insurance setoffs. Rather, such a legislative goal would be equally served by allowing governmental recipients the same elective setoff option as similarly situated private insurance recipients.

Similarly, the legislative objective of offering a minimum no-fault premium for the poor and disadvantaged would be equally advanced by an elective governmental setoff as well as an elective private insurance setoff. Assuming *arguendo*, that the present so-called uniform premium contains a uniform premium reduction for the compulsory governmental setoff,[13] an elective governmental setoff would offer the poor and disadvantaged the opportunity to elect the governmental setoff. Thus, in theory, the same minimum premium would be available under an elective governmental setoff provision. The poor would not be compelled to purchase duplicative governmental or private insurance coverage unless they elected to pay additional no-fault premiums for the additional coverage. An elective governmental setoff and an elective private insurance setoff would eliminate all unwanted additional or duplicative coverage. The coverage provided and the corresponding premium paid would reflect the individual's coverage needs and the corresponding individual's premium burden chosen.

The majority opinion also finds no Due Process violation on the grounds that social security survivors benefits arise out of the same accident as no fault benefits and are "duplicative" and "redundant" (A. 2). However, this record on appeal is totally barren of any evidence, or even the assertion by State Farm that the receipt of full no-fault benefits and full social security

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[13] The majority opinion apparently assumes some uniformity in the governmental setoff and corresponding uniform premium charge. However, O'Donnell's argue, and Justice Williams' opinion (A. 39) cogently explained, how a compelled governmental setoff and a uniform premium charged to Social Security recipients for less benefits received is irrational and discriminatory. It forces a small class of governmental recipients to subsidize a premium savings to all Michigan Motorists including those who receive private insurance benefits.

benefits would have resulted in any *actual* duplication or redundant benefits to the O'Donnell family.[14]

In essence, the perceived evil of duplication, as an abstract proposition is equally applicable to all collateral private or governmental benefits arising out of the same accident. Both subclasses may have collateral benefits payable arising from the same accident, losses in excess of the statutory maximum, and the same possibility of duplication. The fact that Social Security survivors benefits and no-fault benefits were payable because of an automobile fatality is a distinction without a policy of difference. The two subclassifications stand on equal footing, and the potential for duplication is the same for both; hence to conclusively deny no-fault benefits to governmental recipients is a patently arbitrary classification, utterly lacking in rational justification under the Due Process Clause[15] and a denial of equal protection of the laws.[16] The statutory scheme of duplication elimination is underinclusive in that private collateral recipients are allowed duplication without regard to actual loss and overinclusive in that governmental recipients, such as the O'Donnell family, are conclusively denied governmental benefits without regard to actual losses in excess of the no-fault statutory $1,000 maximum per month.

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[14] The O'Donnell's, victims of summary judgment below, offered in the application for rehearing to show the Michigan Supreme Court that Mr. O'Donnell's annual gross earnings prior to death were approximately $25,000.00.

[15] *Flemming* v. *Nestor*, 363 US 603, 611 (1960); *Richardson* v. *Belcher*, 404 US 78, 81 (1971).

[16] *Jimenez* v. *Weinberger*, 417 US 628, 637 (1974); *United States Dept. of Agriculture* v. *Moreno*, 413 US 528, 538 (1973).

Lastly, the Michigan Supreme Court's apparent reliance on *Richardson* v. *Belcher*, 404 US 78 (1971), is misplaced. In *Richardson*, the public purse, Social Security, was the beneficiary of a setoff for workmen's compensation benefits received. In a 4-3 decision, the *Richardson* majority held that the setoff was rational and not in violation of due process or equal protection on the grounds that Congress could determine that the need was being met by the states and federal duplication could harm state programs, 404 US 78, 83-84.

The *Richardson* decision is distinguishable and should not be extended to the case presently before this Court for a number of reasons. First, the special deference and latitude in the dispensing of public funds, *Dandridge* v. *Williams*, 397 US 471, 479, 491 (1970); *Jimeniz* v. *Weinberger*, 417 US 628, 633 (1974); *Richardson* v. *Belcher*, 404 US 78, 81 (1971), is inapplicable to this case where private insurance contractual rights are being withheld. Secondly, the rights in dispute here are contractual and expressly distinguished from public expectation in *Richardson*, 404 US 78, 80-81 (1971) and *Flemming* v. *Nestor*, 363 US 603, 611 (1960).

Lastly, as a policy matter *Richardson* focused on the power and latitutde of Congress to preserve public funds when the perceived need is being satisfied by another governmental program. Here, the State of Michigan is attempting to preserve private insurance funds at the expense of the public purse. The compulsory governmental setofr attempts to perpetuate a federal public need by continuing a void in private insurance coverage. The Social Security survivors

benefits are directed to the congressionally determined "needy". Congress, not the Michigan legislature, has the public responsibility in the distribution of federal funds, the rational basis to redefine Michigan no-fault recipients as no longer "needy", and reallocate those federal assistance funds. The Michigan statute indirectly attempts to reallocate federal funds within Michigan's no-fault systems to other private recipients (insurance companies or other insureds). The framework of federalism is threatened by the Michigan statutory assertion of dominion over federal spending.

CONCLUSION

For these reasons it is respectfully submitted that this Honorable Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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